

Legal language: Stylistic analysis of “Convention on Cluster Munitions”¹

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Abstract

English is undoubtedly the most important means of communication between different nations worldwide. It is the *lingua franca* in most of the international gatherings, be them political, economical, social, artistic, literary etc. Similarly, in this framework, diplomatic and political interaction among nations is rapidly increasing, thus, rising the need for professionalism in translation. International law needs to be translated accurately in order to fit every country's national political and cultural mentality.

This study analyses the peculiarities of legal translation with a focus on international treaties, namely “Convention on Cluster Munitions – CCM”, which Albania ratified and is a Member State.² This study focuses on the peculiarities and characteristics of legal-diplomatic language in terms of style, register, tone, sentence structure, syntax, and lexicology, the uniformity of terminology, functional equivalence and in the same time underscoring the difficulties that have been encountered during the translation of CCM.

In order to better understand the above mentioned characteristics, we will make a stylistic analysis taking into account the examples extracted from the official texts in both English (source text, ST) and Albanian (target text, TT). Even though we will confront both texts together - ST and TT - we cannot consider this analysis a contrastive and comparative one. It is not the scope of this study to compare and contrast the linguistic tools to identify the similarities and differences. On the contrary, we will focus on the style and tone of the conventions

¹ Cluster Munitions” is translated as “municionet thërrmuese” in the Republic of Albania and “municione kasetore” in the Republic of Kosovo. Unification of legal language is a necessity. However, this aspect goes beyond the scope of this study.

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² The official document of CCM is available at:

<http://www.clusterconvention.org/files/2011/01/Convention-ENG.pdf>

and the way these two components are linguistically portrayed in both languages.

Key words: *legal language, style, tone, standardization of terminology, translation problems.*

Features and nature of administrative language

Legal translation has an interdisciplinary nature which demands knowledge with a number of subjects, including law, linguistics, translation and intercultural communication. As far as the nature of legal language is concerned, according to Deborah Cao legal language is identified and linked with the normative, performative and technical nature of language use.³ It is related to norm creation, norm production and norm expressions. The normative nature of law derives from the fact that law has the basic function in society of guiding human behavior and regulating human relations.⁴ The normative nature of legal language is expressed with some particular linguistic tools which indicate ordering and instructive modalities.

Regarding the performative nature of legal language, it is closely linked to the function of law. Words are not only something we use to say things, we also use them to do things. Law is created to be respected⁵. For example: You are fined 200 Euros. This very short sentence implicitly demands that the person to whom it is addressed should pay the fine, thus take action. The performative aspect of legal language can be achieved through the formal tone of the documents.

Technical nature of legal language, according to Deborah Cao, is evident in all such texts because their content consists of technical terms which show how and what needs to be done. Legal lexicon and its structure display some of the characteristics of this legal language.⁶

It is a language with specific purposes: legal, administrative, diplomatic and political purposes. Technicality of such a language is

³ Deborah Cao. *Translating law*. Clevedon, 2007, p.13.

⁴ Ibid

⁵ Ibid. p. 14.

⁶ Ibid. p. 16.

expressed with entirely informative language and emotional style. The drafter's personal opinion is not to be expressed.

Style and tone of the Convention on Cluster Munitions

Xhevat Lloshi states that the style of legal documents falls under the category of standard style as opposed to the individual style that we encounter in literary texts. The standard organization of the text is very conventional, traditional, generalized predefined. Predefined structure means that the new text (what we are writing or saying) is in conformity with the previous texts, with the presence of borrowings of some components or entire parts of discourse.⁷

As far as the style is concerned, according to Xhevat Lloshi, the stylistic function of the legal text is prescriptive and obligatory, meaning that its objective is not only to inform, but to show what needs to be done, what is ordered to be done and what is the norm which is not to be challenged or changed. He states that both drafters and translators of legal documents must abide by some normative criteria. Firstly, the content of these kinds of texts must portray the interests of the parties. Under no circumstances should the writer directly express their reactions and feelings, including the individual style. Secondly, the linguistic transfer must be accurate, explicitly including all the details of circumstances with the aim of avoiding misinterpretation, arbitration and intentional breaches of the truth. Linguistic accuracy avoids ambiguities of standard language. Once the linguistic formulation comes into existence, it becomes consistent as part of the standardization of the lexicon. Thirdly, it is important that such texts should not be changed within a short period of time for linguistic changes would bring about difficulties among parties and implementing actors. Consequently, legal writing belongs to the conventional and traditional style.⁸ What is important in the final

⁷ Xhevat Lloshi, *Stilistika e Gjuhës Shqipe dhe Pragmatika*, Second Edition, Tirana, 2005, fq. 51.

⁸ Ibid.

version of the text is the linguistic naturalness or the preservation of stylistic aspect.⁹

Illustrations of stylistic function taken from the text:

The prescriptive and imperative nature of the text is expressed through some linguistic features which render the sentence authoritative. For example, the following example results from key-wording and statistical methods:

- 1) The verb "*shall*" which implies obligation is used 90 times. It is translated as "*duhet*" in Albanian.
- 2) 25 sentences in the text start with the words "*Each State Party shall...*" Using the singular person instead of plural (Parties) means that the convention is addressed to member states not in a collective way. Collective nouns might indicate lack of individual responsibility. The determiner "*each*" emphasizes the direct reference to each of the state parties, in other words, equal individual outcomes (of each member state) are expected to be achieved. "*Çdo Shtet Palë*" is the Albanian equivalent.
- 3) The use of present simple. Ex: *Each state party undertakes...*, *Each state party believes...*, We can hardly find any other tense of the verb throughout the target text. Present simple implies the urgency of the action and the duration of its provisions. Additionally, it implies that the treaty is binding any time the authorities refer to it.
- 4) The use of "full infinitives" to express the "to-do" task has an obligatory role.

⁹ Viktor Ristani, *Kontribut në Studimet Përkthimore Gjatë Viteve '90*. Tirana, 2010, fq. 212.

<p>Each State Party undertakes never under any circumstances <u>to</u>:</p> <p>(a) <u>Use</u> cluster munitions;</p> <p>(b) <u>Develop, produce, otherwise acquire, stockpile, retain or transfer</u> to anyone, directly or indirectly, cluster munitions;</p> <p>(c) <u>Assist, encourage or induce</u> anyone to engage in any activity prohibited to a State Party under this Convention.</p> <p>Pg. 3</p>	<p>Çdo Shtet Palë, në asnjë rrethanë, nuk duhet <u>të</u>:</p> <p>(a) Përdorë municione thërrmuese;</p> <p>(b) <u>Zhvillojë, prodhojë, të marrë, grumbullojë, mbajë ose transferojë</u> tek askush, në mënyrë të drejtpërdrejtë ose jo, municione thërrmuese;</p> <p>(c) <u>Ndihmojë, inkurajojë ose tërheqë</u> dike tjetër për t'u angazhuar në aktivitete që janë të ndaluara për Shtetet Palë në këtë Konventë Pg. 3</p>
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Regarding the second normative stylistic function that Prof. Lloshi suggests, all the legal and military terms are considered as such because they belong to a system of terms. It is in the system of terms that we have to consult in order to avoid misinterpretation. It can be illustrated in the following examples:

- 5) The term "*Victim assistance*" could come across as a very simple phrase which is applied in the standard language as well. However, it has another meaning in this context, constituting one of the most used terms. The word "*victim*", followed by "*assistance*", is very important in this context because it constitutes one of the three pillars of this convention. It is translated as "*asistencë ndaj të aksidentuarve*".
- 6) "*Cluster Munitions*" is another term and its sensitivity is explained before. As far its translation, the translator has no choice but to consult the experts in the military field because this term belongs to the military jargon and the translator cannot propose a new one. Whether the military experts consulted the linguistic experts, that is another issue.

The third feature proposed by Prof. Lloshi can be analyzed through corpora study. Almost all the international treaties have the

same structural, stylistic and syntactical features. This can be considered an established conventional style and cannot be changed.

The tone of the legal language has its own characteristics. According to Xhevat Lloshi, the tone of the legal language is purposefully reserved, delicate, and even showing ethical formality. This can be achieved by avoiding linguistic devices with subjective charge, emotional and expressive stylemes. The drafter of the legal document is obliged to introduce a methodical, official and objective approach.¹⁰ According to Deborah Cao, the legal translator's job is not to provide legal advice and solve legal problems, but to translate and facilitate communication across linguistic, cultural and legal barriers through the medium of language.¹¹

These features are clearly expressed in CCM. No emotional attributives can be found throughout the text. No personal opinion of the drafters can be found either. The attributives' role is only informative and grammatically speaking, they are mostly attributive nouns and a few neutral attributive adjectives. Ex: *gender-sensitive assistance, munition victims, coordinated manner, national stockpiles, fundamental freedom, human rights, medical care, proposed extenuation, suspected hazardous areas, total area, socio-economic and environmental implications, relevant guidelines.*

Standardization of legal terms and concepts in translation

In order to reduce the number of international disputes, especially in the field of legal documents, there should be some sort of standard form of legal concepts equivalents, which is not based on the mechanical choice of the meaning but involves a comprehensive and contextual choice. The question which arises here is what should be standardized?

The process of standardization does not always mean the need for finding similarities. It is also another form of standardization if one is able to point out the differences between the source and target texts.

¹⁰ Xhevat Lloshi, *Stilistika e Gjuhës Shqipe dhe Pragmatika*, Second Edition, Tirana, 2005, fq. 205.

¹¹ Deborah Cao. *Translating law*. Clevedon, 2007, fq.4.

Kierzkowska suggests a methodology towards achieving this end, in the domain of court interpreters, she says, "the first step should be taken towards collecting basic information on the materials which have been already developed in this field in different countries. Then, by way of comparative studies, a special working group would suggest solutions to be agreed upon".¹² However, this process requires years to achieve.

One of the methods by which legal equivalences are standardized is through identifying regularities and patterns in the choices made by translators and which indicate that they are governed by norms in the translation process. Therefore, it is safe to assume that 'norms' play a major role in stabilizing and standardizing legal language. Additionally, consistency of terms through a text is very important as well. It would cause ambiguity if a single term introduced in a text is translated differently even though it can bear the same meaning.

However, standardization does not occur only at the lexical level. According to Prof. Xhevat Lloshi the stylistic choice is also governed by leading organizational principals to fulfill such requests. Formal standardization is evident in two levels: stereotypical phrases and sentences, syntactical construction and paragraph organization. If standardization is not respected, the text is subject to be doomed as invalid for the purpose it has.¹³

Linguistic and Stylistic analysis of the source text and its peculiarities

The importance of the ST and its features should not be underrated. The ST is a UN international treaty. It falls within a special type of legal English which is of a highly complex nature. It "differs significantly from normal formal usage. This variety of English can be acquired only through a very specialized form of schooling. It is more

¹² Kierzkowska, D. International Unification of Court Translators' Principles of Work-Needs and Possibilities, In Ne keman, *Translation: Our Future Proceedings of the XIth World Congress of FIT* Euroterm Maastricht: Euroterm, 1987. P. 441.

¹³ Xhevat Lloshi, *Stilistika e Gjuhës Shqipe dhe Pragmatika*, Second Edition, Tirana, 2005, fq. 206.

than a professional jargon, as it contains a specialized lexicon and its own peculiar syntactic constructions"¹⁴

A prominent feature in the examined text is the long and complex sentences composed of "parallel structures or homogeneous clauses".¹⁵ The two-page long introductory sentence illustrates this feature: there are 20 homogenous subordinate clauses within a sentence, typical of the language of treaties. They are used in order to emphasize the legal act: deeply concerned that civilians...; determined also to ensure...; Resolved to do...; recognizing the need...; bearing in mind...; etc. These parallel structures serve as a list of reasons why this convention came into being, conveying a diplomatic tone which later will be supported by the articles of the convention.

Another feature is the intrusive sentences, which are the insertion of conjoined and embedded elements into other sentences to make them more complex sentences. These elements could be either a noun phrase or a prepositional phrase separating the subject and verb from the object creating a difficulty in the way one understands the sentence. In the first article, the intrusive elements are used to place the information in one self contained unit: *Each State Party shall, in accordance with national regulations, separate all cluster munitions under its jurisdiction and control from munitions retained for operational use and mark them for the purpose of destruction.*

Active sentences are predominantly used in the text of CCM to indicate the performative nature of legal language (subject – verb – object). It explicitly states who must do what. However, the use of passive sentences occurs throughout the text when the focus is on the object of the sentence: *A request for an extension shall be submitted to a Meeting of States Parties or a Review Conference prior to the expiry of the time period referred to in paragraph 1 of this Article for that State Party. Each request shall be submitted a minimum of nine months prior to the Meeting of States Parties or Review Conference at which it is to be considered.* (pg.8)

¹⁴ Mok, O. *Accessibility of Specialized Lexicon as Criterion for Quality Assessment of Legal Translation*. Babel, 1995. P. 196.

¹⁵ Ibid. p.167.

It is also noticed that there is extensive use of prepositional phrases. This is a common feature of legal English and appears throughout the examined text. This frequent use of prepositions is due to the use of the lengthy and complex sentences as prepositions are very effective tools for linking sentences: *The adoption of the Protocol on Explosive Remnants of War; The protection of civilians from the effects of cluster munition remnants in post-conflict environments; The Declaration of the Oslo Conference on Cluster Munitions.*

Additionally, it is also clear that there is a significant lack in the use of direct negatives. It is noticed that all acts were issued by the use of the positive regulatory tool 'shall', and not by prohibition 'shall not', although the use of the negative and even double negatives is the normal practice in legal documents. The reason for the lack of use of direct negatives could be due to the fact that the examined text is an international treaty and all parties are hoping for a positive outcome of the treaty. Therefore, the legal directives are presented in a way by which the emphasis is focused on what the parties should do instead of what they should not do.

Another feature which is tackled through the analysis of the text is the use of the specialized terms (legal lexicon). Terms are generally taken to be the unique subject-related use of nouns and sometimes verbs. They could also be a word or a phrase. Kaiser-Cook says that "the characteristics of a term which distinguish it from the non-term are precisions and the fact that it belongs to a system of terms, which are the linguistic manifestations of a system of concepts".¹⁶ Terms in the text belong to a political and legal universe, they include a set of verbs peculiar to treaties: *comply, commit, undertake, prevent, recognize, accept, approve, accede, ratify*. The terms also include a set of special nouns and noun phrases: *National implementation, state parties, Security Council, military personnel, settlement of the dispute*.

Another characteristic of this material are the military terms which constitute technical problems and bearing military sensitivity:

¹⁶ Kaiser-Cook, *Murder in the Laboratory: Termhood and the Culture Gap*. In Snell-Hornby, *Translation as Intercultural Communication*, John Benjamins Publishing, 1997, p. 284.

cluster munitions, failed cluster munitions, unexploded submunition, cluster munition remnants, self-destruction mechanism”, self-deactivating, explosive bomblets. These terms can be found in the explanatory article of the convention, accompanied by their definitions because it is of high importance that all the Member States of the convention are referring to the same item when they mention “cluster munitions” or any other types of munitions in the international meetings or when they report to the UN Secretary General.

Linguistic difficulties arising from the source language

The decisions made by translators are essential not only at the linguistic translational level, but also on the legal-political level. The decisions made by translators depend first and foremost on the legal interpretation of the text. In order to point out the translation difficulties arising in the ST, there should be a clear examination of the legal interpretation. Legal analysis suggests translation difficulties that the translators are expected to face and ways of tackling them by use of the correct equivalence. We have chosen two more complicated examples to illustrate the complexity of the text and areas for possible misinterpretation which might create difficulties during the translation.

Basing themselves on the principles and rules of <u>international humanitarian law</u> , in particular the principle that the right of parties to an armed conflict to choose methods or means of warfare <u>is not unlimited</u> , and the rules that <u>the parties to a conflict shall</u> at all times distinguish between the civilian population and <u>combatants</u> and between civilian objects and military objectives	Duke u bazuar në parimet dhe rregullat e <u>ligjit humanitar ndërkombëtar</u> , në veçanti parimin që e drejta e palëve në një konflikt të armatosur për zgjedhjen e metodave ose mjeteve të luftës është e kufizuar, dhe për rregullat që <u>palët në një konflikt duhet</u> të bëjnë dallimin ndërmjet popullsisë civile dhe <u>luftëtarëve</u> si dhe ndërmjet objekteve civile dhe <u>objektivave ushtarake</u> dhe në këtë këndvështrim t'i drejtojnë
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<p>and accordingly direct their operations against <u>military objectives</u> only, that in the conduct of military operations constant care <u>shall</u> be taken <u>to spare</u> the civilian population, civilians and civilian objects and that the civilian population and individual civilians enjoy general protection against dangers arising from military operations, HAVE AGREED as follows: pg 2</p>	<p>operacionet e tyre vetëm kundër <u>objektivave ushtarake</u>, dhe që në sjelljen e operacioneve ushtarake <u>duhet</u> të kushtohet kujdes i vazhdueshëm <u>për të kursyer jetët</u> e popullsinë civile, civilët dhe objektet civile dhe që popullsia civile dhe individët civilë të gëzojnë mbrojtjen e përgjithshme ndaj rreziqeve që vijnë nga operacionet ushtarake, KANË RËNË DAKORD si më poshtë : pg 2</p>
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The translator is faced with a very formulaic and complex one-paragraph-long clause which is full of confusing terms both military and legal ones. What is more confusing is the terms which in another context are not considered as such. The first dilemma that the translator has when he/she is faced with long sentences is the question whether the translator should break the sentence into two and make it more comprehensible or preserve it as the source text is.

However, there is no possibility of such a choice in this case because we have to do with a subordinate clause which does not stand on its own, let alone to be broken down. Schaffner has another explanation regarding the structural level. She suggests that one sentence in the ST must correspond to one sentence in the TT, and in the case of treaties, the negotiators "must be able to refer to 'article 1, paragraph 2, sentence 3 without causing misunderstandings for their counterparts".¹⁷

The clause itself consists of six sub-clauses, four of which are defining relative sub-clauses. The question is: which are homogeneous clauses to the first one: "*Basing themselves on the principles and rules of*

¹⁷ Susan Šarčević, Translation of Culture-Bound Terms in Laws. In Sager, J.C. *Multilingua: Journal of Inter-language Communication*. Amsterdam: Mouton Publishers, 1985, fq.121.

international humanitarian law" and which are intrusive and subordinate to it? Defining the relations between them would help us grasp the meaning of the sentence better. Punctuation system is of help as well.

The modal verb "*shall*" has got another meaning in the legal context. It entails the force of obligation. The final Albanian version is "*duhet*". However, translators in Albanian have decided to translate only the main verb in present simple tense.

One of the difficulties that the translator faces is the prepositional phrase "*on the principles and rules of international humanitarian law*". Before translating this phrase the translator should clarify the role of the adjective "*humanitarian*". Is it referring to the law that addresses humanitarian issues such as reducing poverty in the world or is it referring to civilian issues as opposed to military one? Either way, the fact that this is a legal term, like criminal law or administrative law, the translator should acknowledge the fact that there should be an already set equivalence for this term. The final translated version is "*ligji ndërkombëtar humanitar*". The version given by the translator will be discussed in the next chapter.

Another awkward feature which adds to the complexity of this clause is the double negatives: "*is not unlimited*". This is another difficulty that the translator is facing. Should he/she remain faithful to the ST or make it easier to comprehend by using the positive option? The final version of the translated text is "*është e kufizuar*".

"*The parties to a conflict*" is another problematic phrase. First of all it is very generic. Does the word "*parties*" refer to armed forces only, does it involve locals who might indirectly get involved or does it involve the state as officially/politically involved? Secondly, what can be considered a "*conflict*" in a democratic and predominantly peaceful country cannot be considered as such in another country where democracy is lacking. Thirdly, does it imply arms? It can be literally translated but it can open doors to ambiguities and misinterpretations.

The word "*Combatants*" according to the English-Albanian dictionary by Pavli Çesku is translated as "*luftëtar*". There is a

cultural-historical connotation to this word "luftëtar" because it has been used in movies during the communist regime as well as in the school text books at that time. This means that Albanians go back on time when they come into contact with this word. However, it is safer to leave it like this than to run the risk of restricting the meaning to "ushtarak" which denotes the armed forces only.

"Military objectives" raises the question whether the "objectives" is abstractly referred to the thing that somebody is trying to achieve or is it a target for the military to reach in the battle field?¹⁸ The context helps us assume that the latter is the case.

"To spare the civilian population", according to the Oxford Advanced Dictionary, means "to allow somebody, something to escape harm, damage or death, especially when others do not escape it. Word by word translation in this case would seem awkward in Albanian: "për të kursyer popullësinë civile". In this case we need to make use of addition "jetën" to make the meaning clearer, "për të kursyer jetën e popullësisë civile".

Article 3 <u>Storage and stockpile destruction</u> 1. Each State Party shall, <u>in accordance with national regulations</u> , separate all cluster munitions under its jurisdiction and control from munitions retained for operational use and <u>mark</u> them for the purpose of destruction. pg 5	Neni 3 <u>Magazinimi dhe shkatërrimi i stokeve</u> 1. Çdo Shtet Palë, <u>në përputhje me rregulloret kombëtare</u> , duhet të ndajë të gjitha municionet thërrmuese nën juridiksionin e vet dhe duhet t'i kontrollojë nga municionet e mbajtura për përdorim operacional dhe duhet t'i regjistrojë për t'i shkatërruar. pg 5
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¹⁸ Definition taken by Longman Language Activator.

The heading of the article is highly technical, involving military terms, "*Storage and stockpile destruction*" The three words included in the heading are already established terms in the military community. They are part of the military jargon and if changed can cause confusion to the target reader. All the translator should do is ask the specialists in the field or consult previous translations of the same kind. In this case we cannot resort to synonymy. "*Magazinimi*" is the only option out of some synonyms such as "*depozitimi*" or "*ruajtja*". The heading, as we see, has got two opposing nouns which imply two different ideas, namely "*storage*" and "*destruction*" which during translation should imply the same opposing force.

The verb "*to mark*" in the military context is more than "*shënjoj*" in Albanian. Marking in the military context means more than one procedure, it implies registering in the military files. So it is safer to translate it as "*regjistrojë*".

These examples illustrate the fact that the translator must consider three aspects of the text that he/she is commissioned to translate: the semantic meaning in the text as language, the pragmatic meaning in the intention of the background of the creation of the text (context). This includes the language and the technical methods used for that purpose, the target reader, and most importantly the force and the truth of the text. Lastly, the translator must consider the culture of a potential readership. All this process is governed by norms that are mentioned in chapter one.

Conclusions:

It is evident that the translation of legal documents falls within two disciplines, that of language and linguistics on one hand, and that of a juridical nature on the other. This allows us to speak of this process as a 'multidisciplinary operation'.¹⁹ What becomes clearer is also the general acceptance that the translator of a legal text should have the ability to comprehend the intention and message of the ST as fully as possible. Whereas Lane says, "under no circumstances is the translator

¹⁹ Stuart Campbell, *Translation into the Second Language*. New York, 1998, fq. 447.

permitted to place his own interpretation on the text, and it is absolutely forbidden for him to attempt to interpret the legal content".²⁰ It is the status and the position of the document drafter(s) or the institution which vests authority on the text. Legal texts convey the power of law; the legal language is instrument with which the law is transmitted. For example: the linguistic tool "shall" has an authoritative role in the legal context.

Additionally, we analyzed the style and tone of the convention and the way how the text's stylistic function contributed to the convention's authoritative tone. It is important to stress the fact that there is no room for expressiveness, reaction and personal feelings. The words chosen by the translator must not have emotional charge or biased interpretation. The translator must avoid ambiguities, additions, omissions of part of a sentence. Additionally, he/she must preserve the same visual structure with the original document. Style and register must be maintained, keeping in mind the cultural and pragmatic adjustment. Another aspect of legal texts is the standardization of terminology both at the macro-text and micro-text.

This study also dealt with the difficulties that the translator faces during the translation process of international treaties. We analyzed two sentences from the text, demonstrating the formulaic nature and the complexity of the legal style. Legal-diplomatic texts, especially the international conventions, have conventional character. These linguistic conventions are displayed at lexical, syntactical and structural level.

Finally, the translator must consider three aspects of the legal text he/she is translating: the semantic meaning of the text, the pragmatic meaning and the whole background of the creating of the text such as the context and the extra-linguistic background. Extra-linguistic background implies the situation in which the text was created, the readership this material is addressed, etc. This includes the author, the situation in which it was created, the language and technical methods used for that purpose, the reader it addresses, and most important the

²⁰Alexander Lane, *Legal and Administrative Terminology and Translation Problems, Langage du Droit et Traduction*. Conseil de la langue Franciase, 1982, Fq. 223.

force and truth of the statement. It must also include the culture in which the ST and the TT are created.

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